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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Billed Party Preference	)	CC Docket No. 92-77
for 0+ InterLATA Calls	)	

FURTHER REPLY COMMENTS OF THE AMERICAN PUBLIC COMMUNICA;TIONS COUNCIL

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The American Public Communications Council, Inc. ("APCC"),[1] hereby replies to comments submitted in response to the Commission's Further Notice of Proposed Rulemaking ("Further Notice") in this proceeding, FCC 94-117, released June 6, 1994.

SUMMARY

The comments filed in response to the Further Notice confirm that the costs imposed by the Commission's billed party preference ("BPP") proposal far exceed its benefits. Looking only at the current local exchange carrier ("LEC") estimates of their BPP implementation costs, LEC-estimated costs alone total at least $750 million -- more than 50% higher than the Commission's $420 million estimate for all parties' costs.

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[1] APCC is a trade association made up of more than 800 independent (non-telephone company) providers of pay telephone and public communications equipment, services, and facilities. (APCC is now an independent association and is no longer affiliated with the North American Telecommunications Association.) APCC seeks to promote competitive markets and high standards of service for pay telephones and public communications. APCC has participated in each phase of these proceedings, beginning with Bell Atlantic's 1989 Petition for Rulemaking.

But the true costs of BPP are far higher than even this exorbitant number. As a supplement to the Jackson-Rohlfs study submitted with APCC's Further Comments, and based on a review of record data, Dr. Charles L. Jackson and Dr. Jeffrey H. Rohlfs of Strategic Policy Research have developed a comprehensive estimate of the total costs of BPP. They conclude that the real costs of BPP, which include several categories of costs not estimated by the Commission or other parties, will be roughly $1.5 billion. This is twice as high as the current LEC cost estimates, and far higher than any reasonable estimate of the value of the benefits that can be expected from BPP.

The Jackson-Rohlfs supplementary study estimates that LEC costs will total about $1.6 billion in one-time costs and about $500 million in recurring costs, for a total annual cost of close to $1 billion per year. In addition, however, Jackson and Rohlfs demonstrate that substantial costs will be incurred by other parties as a result of BPP. Interexchange carriers ("IXCs") and operator service providers ("OSPs"), for example, will incur major marketing costs both on a one-time and recurring basis -- a point that was not been considered by the Commission in its Further Notice analysis. Jackson and Rohlfs estimate that these costs will exceed $300 million on an annual basis.

Other carriers, such as cellular carriers and competitive access providers ("CAPs") also will incur significant costs, estimated at about $15 million annually. Furthermore, consumers will incur paperwork costs, estimated at $16 million annually.

Finally, there will be a substantial consumer welfare loss if, as appears likely, the Commission orders recovery of BPP costs from generally assessed access charges. Jackson and Rohlfs estimate this potential welfare loss at $164 million per year.

The Jackson-Rohlfs estimate is based on the FCC's assumptions regarding the specifics of BPP regulations and the traffic volume that BPP is likely to serve. However, they also analyze alternative assumptions, and show that under any reasonable set of assumptions, BPP's costs are far greater than its benefits. Because it involves very high fixed and usage sensitive costs, BPP cannot be turned into a winning proposition for consumers by altering one's assumptions or taking steps to increase BPP usage. Regulators who seek to maximize consumer welfare must vote against mandatory BPP.

An additional cost not quantified in the Jackson-Rohlfs study is the loss of service from public payphones and other telephones serving the transient public. The comments of numerous parties demonstrate that BPP will suppress the supply of payphones, generating more waiting in line at heavily used locations such as airports and completely eliminating service in many inner-city and rural locations where payphones serve critical functions in providing primary telephone links for many people as well as emergency services. As one commenting party put it:

> BPP will not work from thin air and that is what will be at a small town convenience store instead of a payphone.

The comments also confirm that the benefits of BPP are far less than estimated in the Further Notice. Jackson and Rohlfs

conclude that the maximum value of the benefits that could accrue from BPP under the Commission's assumptions is $221 million per year. Moreover, many comments provide data indicating that the Commission's assumptions about the traffic benefited by BPP are wrong. The operator services market is growing less rapidly than the toll market as a whole, and is subject to ever-increasing competition from cellular and other wireless services, as well as access code calling and the explosion in the use of "subscriber-specific" 800 numbers. In light of this growth, the value of the convenience benefit of BPP, which is marginal in any event, must be considered very small.

Even more significant, the record confirms that BPP's elimination of commission payments is far from being the benefit claimed by the Commission. Jackson and Rohlfs demonstrate that commission payments are primarily transfer payments which do not consume resources and that removing commission payments does not in itself produce any benefit to society. Further, the record shows that commission payments will be replaced by expenditures on advertising and marketing campaigns, which do consume resources. Therefore, removal of commission payments produces not a benefit but a net loss to society, even without considering the enormous additional costs involved in BPP.

While removing the third tier OSP rate differential may produce some benefits, they are minimal compared to the huge costs of BPP. Further, BPP will not avoid any significant regulatory costs. In fact, numerous parties agree that the only significant

benefits of BPP can be obtained far more cost-effectively by initiating a program of reasonable "benchmark"-based rate regulation.

Finally, it would be completely irresponsible for the FCC to adopt BPP while continuing its protracted failure to address the structural inequities underlying the payphone market.

I. COSTS OF BPP FAR EXCEED THE COMMISSION'S ESTIMATE

The Comments filed in response to the Further Notice indicate that the costs of BPP will be much higher than the estimate stated in the Further Notice. Looking at the cost estimates submitted by only LECs for the costs that they will incur, the total of the estimates in the record for LEC implementation costs alone is roughly $750 million per year.[2] This $750 million LECs only figure is more than 50% higher than the Commission's $420 million estimate for the total costs of all parties for implementing BPP.

But the true costs of BPP are far higher than even this exorbitant number. As a supplement to the Jackson-Rohlfs study submitted with APCC's Further Comments, and based on a review of the individual estimates submitted by LECs and other parties as well as independent sources, Dr. Charles L. Jackson and Dr. Jeffrey H. Rohlfs of Strategic Policy Research have developed

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[2] This number was obtained by totaling the current LEC estimates for one-time costs, multiplying the total by the .29 factor used in the Further Notice, and adding the total of current LEC estimates for recurring costs. See Exhibit 1.

a comprehensive estimate of the total costs of BPP.[3] This estimate was developed using the methodology described in Jackson and Rohlfs' initial study. The Jackson-Rohlfs methodology is specifically designed to address several categories of costs that were not included in either the estimate given in the Further Notice or in the estimates developed by individual LECs. For example, the Jackson-Rohlfs study includes estimates of IXCs' increased marketing costs resulting from BPP.

Using as a "base case" the assumptions stated in the Further Notice regarding the traffic volumes subject to BPP, the Jackson-Rohlfs study concludes that the real costs of BPP will be roughly $1.5 billion -- twice as high as the LEC cost estimates currently in the record, and far higher than any reasonable estimate of the value of the benefits that can be expected from BPP. J-R Supp. at 38.

A. Implementation Costs are Higher

1. LEC Costs

The Further Notice estimated that LEC implementation costs -- virtually the only costs that the Further Notice included in its quantification of BPP costs -- would total $380 million per year.[4]

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[3] The study, entitled "Quantifying the Costs and Benefits of Billed Party Preference," is attached to these Further Reply Comments as Exhibit 2. The supplementary study is cited herein as "J-R Supp."

[4] The Further Notice did also attribute a total of $35 million to IXC implementation of BPP. As discussed below, this estimate did not include any estimate of IXC marketing costs. The Further Notice did not discuss any estimates of costs incurred by

By contrast, current LEC estimates now total $750 million per year. Jackson and Rohlfs show, moreover, that even the LECs' revised estimates are conservative and do not include all costs that LECs will incur in implementing BPP. Their estimate, which appears to be the only estimate in the record that includes all relevant costs, is that BPP will cost the LECs more than $1.5 billion in one-time network costs and more than $500 million in annual network expenses, for total LEC network costs of about $980 million per year.[5] In addition, Jackson and Rohlfs estimate that LECs would incur $91 million in one-time administrative expenses to implement balloting, and $7 million per year in recurring administrative expenses, for total administrative costs of $12 million per year.[6] Thus, Jackson and Rohlfs estimate total LEC costs to implement BPP to be almost $1 billion per year.

2. IXC/OSP Costs

The Further Notice assumed that IXCs and OSPs would incur, in total, only $35 million per year in implementation costs. The Further Notice asked for comments on this estimate and encouraged OSPs to specify the costs they would incur. Further Notice, ¶ 28.

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other parties, including consumers.

[5] The LECs' one-time and recurring network costs, as estimated by Jackson and Rohlfs, are identified in the table on page 13 of their supplementary study. J-R Supp. at 13. Jackson and Rohlfs use a factor of 0.3 to convert one-time network costs to annual costs. Id. at 20.

[6] Id. at 14. Jackson and Rohlfs use a conversion factor of 0.05 to convert one-time non-network costs to annual costs. Id. at 20.

As the Jackson-Rohlfs study explains and a number of commenting parties confirm, a major defect in the assessment of IXC/OSP costs in the Further Notice was the failure to consider additional marketing expenses of IXCs/OSPs.

AT&T estimates that total IXC/OSP costs for a one-time "equal access" marketing campaign to capture the market shares that BPP throws up for grabs could well exceed $250 million. AT&T at 17. In addition to these one-time costs, AT&T conservatively estimates that ongoing additional advertising and marketing would cost the industry at least $150 million per year. Id.

Jackson and Rohlfs estimate one-time IXC/OSP marketing expenses of $218 million. J-R Supp. at 19. For recurring costs, they conservatively estimate that IXCs would spend 8% of the market at stake, which the FCC's assumptions indicate would be $3.9 billion per year. Id. at 16. This works out to recurring expenses of $313 million per year.[7] Id. Under these assumptions, total annualized IXC marketing costs would be $324 million.

[7] AT&T's estimate is based on their projection that the total revenue at stake in the 0+ "away-from-home" market would not grow significantly between 1991 and 1997 due to a variety of factors, and would remain valued at about $3 billion per year. As discussed below, APCC agrees that the 0+ market is likely to grow at a significantly slower rate than the Further Notice assumed. The Jackson and Rohlfs study, however, accepted the FCC's assumptions for purposes of their cost analysis. If the market is smaller than the FCC assumed, IXC marketing costs as well as a number of other costs would be less. However, as Jackson and Rohlfs explain, the benefits attributable to BPP would decline even more.

3. Other Implementation Costs

Implementation costs also would be incurred by other parties, including cellular carriers and competitive access providers. Jackson and Rohlfs' estimates for these costs total about $55 million in one-time costs and $7.6 million in recurring costs, for a total of about $15 million annual costs. Id. at 16.

B. There Are Other Quantifiable Costs That Must Be Attributed to BPP

Other costs not considered by the Further Notice are the costs incurred by consumers in responding to equal access ballots and recurring paperwork. Jackson and Rohlfs' estimates for these costs total $52 million one-time and $13 million recurring, for a total of $16 million per year. Id. at 17.

In addition, there would be a hidden burden imposed on consumers if BPP costs are recovered through increases in generally assessed access charges. APCC believes that it would be inconsistent with fundamental FCC policies to recover BPP costs in such a manner. However, many of the advocates of BPP request that BPP costs be recovered wholly or partly in this manner. Therefore, it is necessary to include as a cost of BPP the loss in consumer welfare incurred due to the resulting depression in demand for long distance service. Jackson and Rohlfs estimate this welfare loss to be $164 million per year. Id. at 18 and Appx. B.

C. Under Every Plausible Scenario, the Costs of BPP Exceed the Benefits

The Jackson and Rohlfs do not look only at the costs of BPP under a single set of assumptions. They also analyze alternative assumptions regarding the volume of calls subject to BPP and the parameters imposed by the Commission. They show that under any plausible scenario, BPP's costs are far greater than its benefits. Id. at 21-31. Indeed, they show that the costs of BPP exceed its benefits even when analyzed under a highly implausible set of assumptions which are extremely favorable to the proponents of BPP. Id. at 25-27.

Of equal importance, Jackson and Rohlfs demonstrate why this is the case. There are both high non-recurring costs and high usage related recurring costs associated with BPP. Therefore, BPP cannot be turned into a cost-effective proposition by altering one's assumptions or taking steps to affect the amount of BPP usage. In order to justify the very high fixed costs of BPP, it would be necessary to assume very high usage of BPP. However, increased usage of BPP will greatly increase the usage-related recurring costs of BPP.

In short, as Jackson and Rohlfs show, there is no way that the benefits of BPP can catch up with the costs: BPP is a no-win proposition for consumers. Regulators who seek to maximize consumer welfare must vote against mandatory BPP.

D. Imposing BPP Would Reduce the Quantity and Quality of Public Telephones

The Jackson-Rohlfs study does not attempt to quantify another category of costs that must be attributed to BPP. The comments overwhelmingly confirm that mandatory implementation of BPP will cause a major reduction in the quantity of public payphones available for the use of the public. On this point, there is broad-based agreement among a wide variety of parties, including IPP providers,[8] LECs,[9] OSPs,[10] and location owners.[11] As these parties point out, the direct and predictable result of mandatory BPP will be to eliminate the incentives that ensure the supply of payphones will be adequate to meet demand. By suppressing the supply of payphones, BPP will ensure that travelers will more frequently encounter lines at payphones in airports and other heavily used locations, causing frustration and missed calls. As the American Association of Airport Executives explains:

> The benefit of carrier preference is not much of a benefit if it carries with it increased difficulty for a customer finding a payphone in a public airport from which to place a call.

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[8] See Central Atlantic Payphone Association ("CAPA") at 4; Cherokee Communications at 1-2; Florida Pay Telephone Association ("FPTA") at 3; New Jersey Payphone Association ("NJPA") at 3; North Carolina Payphone Association ("NCPA") at 1; Teltrust at 10.

[9] Ameritech at 5, n. 9; National Telephone Cooperative Association ("NTCA") at 7, n. 10.

[10] Consolidated Communications Operator Services Inc. et al. ("CCOS") at 6; U.S. Long Distance ("USLD") at 8-9.

[11] American Association of Airport Executives at 3; South Carolina Office of Information Resources at 7; Wichita Airport Authority at 1; Wisconsin Truck Stop Operators at 2.

AAAE at 3.

As for less heavily used locations, the predictable result of BPP in many cases will be to eliminate the only phones available. FPTA at 3. As the CAPA and NJPA demonstrate, many IPP providers have focused on making payphones available in inner cities and economically disadvantaged areas. CAPA at 4-6; NJPA at 2-3. Other IPP providers serve rural areas that are often inadequately served by LEC payphone divisions. Cherokee at 1-2; NCPA at 1. In these areas, payphones are a critical link for people who lack residential service as well as for people who find themselves in emergencies. CAPA at 5. NJPA estimates that 30,000 emergency calls are made each month from NJPA members' payphones. NJPA at 3. By imposing mandatory BPP on the industry, the FCC would force removal of many of these payphones and thereby cut off essential services to a substantial part of the population that needs them most.[12] As Cherokee Communications states:

> BPP will not work from thin air and that is what will be at a small town convenience store instead of a payphone.

Cherokee at 2.

II. BENEFITS OF BPP ARE GREATLY OVERSTATED

The comments submitted to the Commission confirm APCC's position that the benefits of BPP are greatly overstated in the

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[12] The comments of LECs confirm that it would be a mistake to assume LECs will increase their deployment of payphones under a BPP regime. Several LECs confirm that commission payments are critical in maintaining current levels of placement of LEC payphones. Ameritech at 5, n. 9; NTCA at 7, n. 10.

Further Notice. Numerous parties provide evidence that the Commission's assumptions regarding the traffic volumes that will flow through BPP are overly optimistic. Even granting the Commission's assumptions, however, Jackson and Rohlfs show that the maximum value of the benefits that can conceivably accrue from BPP will not exceed $221 million -- far below even the Commission's extremely optimistic estimate of BPP's costs.

A. Any Benefits from BPP Would Accrue to a Diminishing Fraction of the "Away-from-Home" Market

As a number of parties point out, the operator services market is growing less than the toll market as a whole. AT&T provides data indicating that there has been negative growth rate in operator assisted traffic. Bell Atlantic also reports a decrease in operator-assisted call volumes since 1990. Bell Atlantic at 10. Other parties show that 0+ calling has been vulnerable to competition from a variety of popular and rapidly growing telecommunications alternatives.

One market sector that is negatively affecting the market for 0+ calling is cellular and other wireless services such as personal communications services ("PCS"). NYNEX at 7-8. Cellular calling is clearly growing at an explosive rate. Cellular and PCS, as well as enhanced paging services, provide a direct substitute for operator assisted calling from payphones and other "away-from-home" locations. NYNEX estimates that payphone calling will be reduced by 50% within 5 to 7 years of PCS deployment.

Another competitive alternative which is eroding 0+ traffic volumes, of course, is the use of alternative dialing sequences. Alternative forms of dialing include not only "access code" dialing, as defined by the Commission, but also the use of subscriber-specific 800 numbers. There is no doubt that access codes and 800 services both offer a direct and ever more popular substitute for operator assisted calling. See, e.g., Teltrust at 11.[13] APCC's SMDR data uniformly indicate that calls to "800 subscriber" numbers -- calls which are not included in APCC's estimates of dial-around calling -- are the most rapidly growing type of calling at IPP. Calls to "800 subscriber" numbers are growing even faster than access code calling.

As discussed above, several parties report data that is consistent with APCC's estimate of current dial-around traffic. In fact, the record is now replete with information showing that, over time, as IXCs have continued to inform and educate their subscribers, consumers are turning to access code dialing in overwhelming numbers. Teltrust states that, in the last year, its payphones have incurred a dramatic rise in use of access codes and other forms of alternative dialing, from 39% to 54% of all calls. Teleport Communications Group ("TCG") estimates that in only 18 months, 0+ calls at its phones fell from 50% to 30% of non-coin interstate and intrastate calls, while dial-around increased from

[13] These 800 services include, for example, numbers that employees use to call their offices when "away from home," and call-home numbers that parents give to their children when away at college or camp.

40% to 60% of the calls. TCG at 3-6. This decrease occurred even though the presubscribed carrier at TCG's phones is AT&T. NYNEX reports that 66% of operator service calls at NYNEX payphones are made on a dial-around basis. NYNEX at 4. According to SNET, dial-around calling has been steadily increasing, and in early 1994 52% of non-coin calls at SNET payphones were completed using access codes. SNET at 4. Polar Communications also reports a steady increase in dial-around calling; in June 1994, 67% of non-coin calls were made using alternative dialing. U.S. Osiris Corp. also supplies data indicating that majority of calls are dial-around.

These statistics demonstrate that the total amount of revenue at stake, and the amount of any benefit based on the application of BPP to this traffic, would be considerably less than the Commission estimated.

Sprint is virtually the only party to claim that future OSP traffic volume and revenues will be greater than the Commission has estimated. Sprint at 15. However, this claim is based on questionable use of statistics. First, Sprint is equating the growth pattern of the overall toll market with that of the operator services sector -- an assumption that is completely unwarranted as shown above. Second, Sprint's claim of 6% growth appears to be based on an analysis of total toll (interLATA plus intraLATA) traffic of "long distance carriers," as stated in the FCC's "Long Distance Market Shares" Report, Table 5, released July 10, 1994. The category "long distance carriers" excludes LECs. LECs still account for most intraLATA traffic, but their toll revenue has been

declining over the last five years, both in absolute numbers and as a percentage of total toll traffic. By excluding the LECs' declining intraLATA toll revenues, while including the intraLATA toll revenue of "long distance carriers," which has been growing at a very high rate at the expense of LECs, Sprint's numbers represent an artificially inflated revenue figure for the toll market as a whole.

In summary, Sprint's data do not rebut the information provided by numerous other parties. In light of all the available substitutes which are rapidly growing at expense of 0+ calling, operator assisted 0+ service can no longer be described as a high-growth sector of the market. BPP will not provide any benefits to callers who use access codes, 800 numbers, or cellular or other personal wireless devices to make away-from-home calls.

B. The Convenience Benefits of BPP Would Be Minimal

As discussed above, data submitted by numerous commenting parties demonstrate overwhelmingly that consumers can and do, routinely and in ever-increasing numbers, dial access codes. These statistics refute the Commission's assumptions about the alleged inconvenience of access code dialing. However, a few commentors, including Sprint, continue to contend that BPP is justified in order to relieve what they view as the inconvenience of access code dialing.

Sprint states that considerable inconvenience is involved in retrieving an access code from one's memory or a card in one's

wallet. Sprint at 7. No party disputes that there is **some marginal** inconvenience involved in this process. However, as explained in the Jackson-Rohlfs study, there is added inconvenience associated with BPP dialing as well, because of the increase in post-dial delay and the potential for requiring the consumer to interface with two operators on a single call. The inconvenience of access codes is minimized by the fact that the consumer must generally consult his or her wallet or memory in any event in order to dial a calling card number. With IXCs increasingly promoting easily remembered access codes such as 10XXX and 800 mnemonics such as 1-800-COLLECT and 1-800-CALLATT, the inconvenience to consumers is further reduced.[14]

In this regard, Sprint's analogy based on industry experience with the use of access codes for direct "1+" dialing from a home or business is flawed. Id. at 8-9. "0+" "away-from-home" dialing and "1+" "home" dialing are not parallel. Consumers recognize that "0+" dialing is inherently complex. Most of the time it involves the use of a calling card number which may or may not include an easily remembered number such as the consumer's home phone number (and usually involves at least a four-digit PIN which is not inherently easy to remember). While it is undoubtedly true that,

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[14] Southwestern Bell also states that a 1992 study shows consumers find access code dialing inconvenient and confusing. Southwestern Bell at 5, n. 8. However, as explained in the Reply Comments of Midwest Independent Coin Payphone Association (MICPA) at 2-3, Southwestern Bell appears to have used the same study in a state proceeding to support the opposite conclusion. In any event, there is little doubt that consumer perceptions regarding the convenience of access codes for operator assisted calling have changed greatly since 1992.

all other things being equal, consumers would prefer not to dial an access code to make operator-assisted calls, it is not at all clear that consumers will "be willing to forego substantial savings in return for this simplicity." Sprint at 8. Indeed, the evidence is that access code dialing has increased precisely because consumers want to save money by avoiding higher-priced presubscribed OSPs. For example, MCI's 1-800-COLLECT campaign has successfully exploited the idea that consumers will call an access code in order to receive a discount on collect calls. If there were a major inconvenience associated with access code dialing, consumers would not be increasing their use of alternative dialing sequences to the levels reported by a wide spectrum of parties.[15]

In summary, the comments and data submitted by other parties refute Sprint's ill-grounded claims regarding the inconvenience of access code dialing. The record certainly does not support the proposition that consumers would be willing to spend hundreds of millions of dollars per year to avoid dialing access codes.

Sprint and some other parties argue that access code dialing is made more difficult because of non-compliance with the Telephone Operator Consumer Services Improvement Act of 1990 (TOCSIA). However, the study cited by Sprint dates from July 1992, a time when TOCSIA's unblocking requirements were not fully phased in. At that time, TOCSIA's 10XXX unblocking requirement had not yet

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[15] Indeed, consumers are willing to dial access codes even, when there are little or no cost savings involved. As TCG's data show, dial-around is substantially presubscribed to AT&T -- a carrier not generally viewed as charging excessive rates.

become applicable to embedded payphones or other "aggregator" equipment that did not have the capability to safely unblock 10XXX. In order to accommodate problems with retrofitting and fraud, the effective date for unblocking such embedded equipment was deferred. In the case of many payphones, the deadline was deferred until January 10, 1993. In the case of other aggregator equipment, the deadlines were deferred, in some cases to as late as April 17, 1997, in the case of equipment that could not be unblocked for $15 or less per line. See 47 CFR 64.704(C). As the Commission stated in its November 1992 TOCSIA report:

> The extent of unblocking of 10XXX access codes is particularly encouraging as the Commission's rules mandating 10XXX unblocking are continuing to be phased in. Thus, our compliance survey suggests that 10XXX access has been unblocked at many phones even before this was required. These unblocking compliance rates are expected to increase as the requirements are phased in.

TOCSIA Report at 14, n. 31.

While there is evidence that a relatively small amount of "blocking" of some access codes at some payphones or aggregator phones continues to persist,[16] the clear direction of the industry is toward full compliance with TOCSIA. In light of the ever-increasing acceptance of access codes by consumers, the marketplace generally does not tolerate blocked payphones for long.

C. Removing Commission Payments Is Not a Benefit

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[16] Some of the residual blocking that has surfaced in the last two years appears to be the result of "self-blocking" of certain access codes by certain IXCs, including some of those advocating BPP.

The record in this proceeding also clearly demonstrates that BPP's elimination of commission payments cannot be counted as a benefit. As the Jackson-Rohlfs study demonstrated, commission payments are a transfer payment which does not involve real resource consumption. See APCC's Further Comments, Exh. 1 at 19. Further, commission payments enable the recipient to reduce costs incurred by consumers for other services provided to them -- such as taxes assessed by government bodies and room charges assessed by hotels. Eliminating these payments does not in itself produce any benefit to society. Indeed, to the extent that commission payments substitute for marketing activities (such as direct mail advertising), the elimination of such payments imposes new costs which must be attributed to BPP. J-R Supp. at 36. See Section I.A.2 above. As AT&T notes, removal of commission payments will require IXCs to find another means of marketing their 0+ services. AT&T at 16. Commission payments will be replaced by expenditures on TV advertising and other marketing campaigns. As a result, BPP's elimination of commission payments must be viewed as a net loss to society, even without considering the other costs of BPP. J-R Supp. at 16, 36.

Further, even assuming commission savings could be treated as a benefit, much of the commission "savings" attributed to BPP, will be offset by increases in charges for hotel telephone service and other services. According to Hilton Hotels Corporation, which last year eliminated in-room telephone calling surcharges, if BPP is imposed Hilton would have to consider reinstating the surcharge at

its hotels. Hilton Hotels Corporation at 2.

AT&T reports that roughly 20% of commission payments are made to governmental or quasigovernmental entities. AT&T at 13-14. As AT&T explains, these entities would recoup most of their lost commission revenue through higher taxes and user fees.

To the extent that commission payments are not offset, they will result in decreased availability of public telephone service, as discussed above. In the case of airports, for example, consumers would face either reduced payphone service or increased prices for parking, snacks, etc. Airports Association Council International at 9.

For all these reasons, Sprint's contention that the Commission has been too conservative in its estimate of commission payments "saved" as a result of BPP is simply beside the point. Whether commission payments average 12%, as the Commission estimated, or 20-27%, as Sprint now claims, the fact remains that these commission payments are financing the deployment of telephones. To the extent that they are removed, payphone owners and location owners will either find other sources of funding by increasing the price of other services to users, or else reduce their investment in public telephones. Either way, the public will lose.

D. The 3d Tier OSP Rate Differential Can Be More Cost-Effectively Addressed Through Other Means

Elimination of the rate differential between AT&T, MCI, and Sprint and "third-tier OSPs" would produce few, if any, clear benefits which are not already being obtained or obtainable by

other means. To the extent that the rate differential is attributable to higher commission payments, the rate differential is, again, a transfer payment, the elimination of which should not be viewed as a benefit. J-R Supp. at 34-35, 37.

Further, elimination of those commission payments will have the same kinds of detrimental effects described above, including suppression of the supply of payphones and increases in the price of various goods and services offered by aggregators.

As to the remainder of the third-tier rate differential, it is arguable to what extent its elimination would produce a clear benefit. Based on the Commission's assumptions about 0+ traffic volume, Jackson and Rohlfs show that the benefit could not exceed $221 million per year. J-R Supp. at 37-38. Assuming that there would be a benefit, however, the record shows that the Commission has overestimated the volume of 0+ traffic that will be carried by third-tier OSPs in the future.

As discussed above, access code traffic is increasing substantially faster than the Further Notice projects. Third-tier OSPs receive a "double whammy" from access code traffic, because as access code traffic increases it becomes increasingly unprofitable for payphone or location owners to presubscribe to such OSPs: it becomes more attractive to try to minimize dial-around by presubscribing to an IXC such as AT&T, MCI, or Sprint. APCC at 24, n.19. Thus, there are numerous reasons to conclude that the Commission's estimate of third-tier traffic is too high.

Sprint, however, contends that the Commission's estimate of

future traffic of third-tier OSPs is too low. Sprint at 15-16. Even the evidence cited by Sprint does not support its claim. First, Sprint notes that IPPs are increasing faster than LEC payphones. However, this does not justify the conclusion that third-tier OSP revenues are increasing faster than those of AT&T, MCI, and Sprint. The growth of dial-around traffic is leading IPP providers increasingly to recognize the attractiveness of brand-names for payphone callers. Moreover, major IXCs such as AT&T, MCI, and Sprint are increasingly targeting the IPP presubscription market. It cannot be assumed that growth in the number of IPPs automatically means growth in the market share of third-tier OSPs.

Sprint is also incorrect in asserting that "the new 'smart' payphones by definition use alternative OSPs." Sprint at 16. Virtually all IPP providers use "smart" payphones in order to rate and route coin calls, because there is no other way to complete coin calls in the absence of an acceptable and reasonably priced "coin line." However, the use of a "smart" payphone for coin calls does not dictate the manner in which operator assisted calls are handled. While it is true that many "smart" payphones have the capability to perform operator service functions, many do not do so for a variety of reasons: economies may be available through the use of a network based OSP, or the payphone-based operator service may not be suited to the particular application. IPP providers will not use the operator functions in their smart payphones to handle 0+ calls if they have concluded that they are economically better off presubscribing their payphones to OSPs, including AT&T,